

EXHIBIT 122

HIGHLY CONFIDENTIAL

Page 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STUDENTS FOR FAIR ADMISSIONS, INC.,
Plaintiff,
vs. CIVIL ACTION NO.:
PRESIDENT AND FELLOWS OF HARVARD 1:14-cv-14176- (ADB)
COLLEGE (HARVARD CORPORATION)

Defendants.

HIGHLY CONFIDENTIAL UNDER THE TERMS OF PROTECTIVE
ORDER
VIDEOTAPED DEPOSITION OF PETER SEBASTIAN ARCIDIACONO
April 12, 2018
8:29 a.m.
Parker Poe Adams & Bernstein, LLP
301 Fayetteville Street, Suite 1400
Raleigh, North Carolina

Reported by: Audra M. Smith, RPR, FCRR
Videotaped: John Roberts

HIGHLY CONFIDENTIAL

Page 27

1 A. Could you point me to where you're looking
2 at?

3 Q. Sure. If you look at page 892, are you
4 with me?

5 A. Yes.

6 Q. Look five lines up from the bottom of the
7 page.

8 A. Yes.

9 Q. Do you see the sentence that says
10 "looking"?

11 A. That's -- yes.

12 Q. So let's break this down so it's easier
13 for the listener or the reader. At this portion of
14 the section -- withdrawn.

15 The section is entitled "Negative
16 Selection," correct?

17 A. Correct.

18 Q. In this portion of the section entitled
19 "Negative Selection," you say: "Looking solely at
20 the observable ability measures for our sample of
21 MBAs, this would not appear to be the case,"
22 referring to what you discussed earlier, correct?

23 MR. STRAWBRIDGE: Object to the form of
24 the question.

25 A. Correct.

HIGHLY CONFIDENTIAL

Page 28

1 BY MR. LEE:

2 Q. Now I want to focus you on the next
3 sentence: "For both men and women, full-time
4 students outside the top-25 have significantly
5 higher math GMAT scores, higher verbal GMAT scores,
6 and higher undergraduate grade point averages than
7 those who do not obtain an MBA."

8 Have I read that correctly?

9 A. Yes.

10 Q. And that was an accurate statement of your
11 conclusion in this peer-reviewed publication,
12 correct?

13 A. For students outside the top-25 going to
14 MBA programs, yes.

15 Q. Yeah. This is actually -- this sentence
16 is actually referring to students who went to MBA
17 programs outside the top-25?

18 A. That is right.

19 Q. Right. The next sentence now talks about
20 those who didn't, correct?

21 A. Correct.

22 Q. And your conclusion is quote: "However,
23 those who do not obtain an MBA may be stronger in
24 other areas not easily measured. For example, they
25 may have stronger social skills or better

HIGHLY CONFIDENTIAL

Page 29

1 connection in the workplace. Indeed, this is
2 exactly what we find."

3 Have I read that correctly?

4 A. Yes.

5 Q. It's an accurate statement of your
6 conclusions, correct?

7 A. For MBAs, yes.

8 Q. And for those MBAs or folks that didn't
9 get an MBA, you found that there were skills that
10 were not easily measured such as social skills that
11 might explain the phenomenon that you observed,
12 correct?

13 A. Provides one possible explanation for the
14 findings, correct.

15 Q. Well, it's the one that you provided the
16 economic community, correct?

17 A. Yes. We say, "For example, they may have
18 stronger social skills or better connections in the
19 workplace."

20 Q. Well, actually, you say more than that,
21 you say, "Indeed, this is exactly what we find."

22 Isn't that what you said?

23 A. They have to be stronger in other areas
24 not easily measured. Stronger social skills or
25 better connections are one example of that.

HIGHLY CONFIDENTIAL

Page 30

1 Q. Fair enough. So let's actually break that
2 down. So there are areas not easily measured,
3 correct?

4 A. Correct.

5 Q. Social skills are definitely one of those
6 areas that are not easily measured, correct?

7 A. Correct.

8 Q. And you found that those not easily
9 measured skills or characteristics can explain the
10 phenomenon that you observed, correct?

11 A. That is correct.

12 Q. And you stand by those conclusions,
13 correct?

14 A. I do.

15 Q. And you stand by the proposition that
16 characteristics or skills that are not easily
17 measured can explain differences between people in
18 cohorts, correct?

19 MR. STRAWBRIDGE: Object to the form of
20 the question.

21 A. Yes. This is sort of a very rare finding
22 in that one of the few cases I've seen where the
23 selection works in the opposite direction.

24 BY MR. LEE:

25 Q. My question, sir, was just a yes or no

HIGHLY CONFIDENTIAL

Page 65

1 judgment, correct?

2 A. That's correct.

3 Q. Are there any allegations in the complaint
4 that you tested and could not support?

5 MR. STRAWBRIDGE: I'm going to object to
6 the question. I think the terms of the
7 parties' protective order prohibits inquiry
8 into any conclusions or preliminary analysis
9 that is not actually in the report. I got a
10 copy of the protective order if you'd like to
11 see it. We can do it at the break.

12 MR. LEE: We can do it at the break. Are
13 you instructing him not to answer that
14 question?

15 MR. STRAWBRIDGE: I think the parties
16 should abide by the protective order, so I'll
17 instruct him not to reveal any preliminary
18 analysis or information that is not disclosed
19 in the report.

20 MR. LEE: I'm not asking for preliminary.
21 I'm asking for final conclusions.

22 BY MR. LEE:

23 Q. Are there any allegations in this
24 complaint that you finally concluded you do not
25 support? It's a yes or no.

HIGHLY CONFIDENTIAL

Page 66

1 MR. STRAWBRIDGE: Same instruction.

2 MR. LEE: So you're instructing him not to
3 answer yes or no?

4 MR. STRAWBRIDGE: Yes, I'm instructing him
5 consistent with the agreed-upon terms in the
6 protective order that the parties are not going
7 to get into conclusions or analysis that is not
8 reflected in the final report.

9 MR. LEE: Okay. I think we'll just have
10 to talk about it and see the judge.

11 Let me move to a slightly different topic.

12 BY MR. LEE:

13 Q. You're familiar with the statistical
14 methodology called multivariate regression
15 analysis, correct?

16 A. Correct.

17 Q. You have used this methodology in this
18 case, correct?

19 A. Correct.

20 Q. You have used it previously, correct?

21 A. Correct.

22 Q. Dr. Card used -- has used it previously,
23 you know, correct?

24 A. Correct.

25 Q. And he's used it in this case, correct?

HIGHLY CONFIDENTIAL

Page 83

1 Q. Now, if I refer to ALDC as a category,
2 you'll understand it includes athletes, faculty
3 staff, dean's list and lineage applicants?

4 A. Yeah.

5 Q. Now, if you go to -- in page 3 the last
6 full paragraph, you'll see a sentence that says,
7 quote, "I do not assert that Harvard uses race to
8 penalize Asian-American applicants who are
9 recruited athletes, children of donors or others
10 identified on the dean's list, legacies or other
11 preferred categories."

12 Do you see that?

13 A. I do.

14 Q. And that's your opinion, Harvard does not
15 use race to penalize Asian-American applicants
16 who are recruited athletes, correct?

17 A. I make no claims on that point, correct.

18 Q. You make no claim that Harvard uses race
19 to penalize Asian-Americans who are children of
20 donors, correct?

21 A. Correct.

22 Q. Or who are on the dean's list, correct?

23 A. Correct.

24 Q. Or who are legacies, correct?

25 A. Correct.

HIGHLY CONFIDENTIAL

Page 88

1 Q. Are you not finished?

2 A. I was going to say, though, the fraction
3 of Asian-American applicants in those groups is
4 significantly smaller than all the other races.

5 Q. Fair enough. But still, removing those
6 folks is more than 5 percent of the pool of folks
7 who have a 25 percent or better chance of getting
8 in, correct?

9 A. Correct.

10 Q. Okay. Now, turn, if you would, to page 69
11 of your rebuttal report. Do you see the sentence
12 that reads, "In my original report, my baseline
13 model excluded recruited athletes, legacies,
14 faculty and staff children, those on the
15 dean's/director's list, and applicants for early
16 admission, in order to focus on the part of the
17 admissions process where anti-Asian discrimination
18 was concentrated, and not on applicants who were
19 subject to special admissions procedures."

20 Did I read that correctly?

21 A. Yes.

22 Q. Now -- skip the next sentence but then go
23 to the next sentence where you make a statement:
24 "As I have pointed out, this produces misleading
25 results because Harvard does not discriminate

HIGHLY CONFIDENTIAL

Page 89

1 against Asian-American applicants who are in the
2 special recruiting categories."

3 Have I read that correctly?

4 A. You have read that correctly.

5 Q. Now, a few minutes ago you told me you
6 didn't claim that Harvard discriminated against
7 people in these categories; do you remember that?

8 A. I do.

9 Q. Here you aren't discussing a claim, are
10 you, you're stating a conclusion?

11 A. Yes. And that's an overstatement of the
12 conclusion for sure.

13 Q. So this is a mistake?

14 A. In the sense that if all my results are
15 robust to the -- to the inclusion of these
16 applicants, but we do have the issue with the
17 personal rating, and there I'm not sure what the
18 answer is with that.

19 Q. I just want to be sure I understand, in
20 your report, which was submitted sometime ago, you
21 stated in black and white, "As I have pointed out,
22 this produces misleading results because Harvard
23 does not discriminate against Asian-Americans
24 applicants who are in the special recruiting
25 categories," that's what you wrote, correct?

HIGHLY CONFIDENTIAL

Page 90

1 A. That's is what I wrote, correct.

2 Q. Until you sat here today, you never
3 corrected that, correct?

4 A. That is correct.

5 Q. And you're now telling me that's
6 incorrect?

7 MR. STRAWBRIDGE: Object to the form of
8 the question.

9 A. I'm telling you the statement is too
10 strong.

11 BY MR. LEE:

12 Q. Okay. Now, I want to talk about the
13 special admissions procedures, and let's start with
14 faculty children. What is a special admissions
15 procedure for faculty children?

16 A. Well, they're clearly given a tip in
17 admissions.

18 Q. Anything else?

19 A. It may -- what we don't know is how that
20 tip operates differently across different
21 dimensions of the applicant.

22 Q. Well, is a procedure written down in
23 writing?

24 A. No.

25 Q. Who is charged with the responsibility for

HIGHLY CONFIDENTIAL

Page 354

1 STATE OF NORTH CAROLINA)

2 COUNTY OF FORSYTH)

3 REPORTER'S CERTIFICATE

4 I, Audra Smith, Registered Professional Reporter in
5 and for the above county and state, do hereby certify that the
6 deposition of the person hereinbefore named was taken before me
7 at the time and place hereinbefore set forth; that the witness
8 was by me first duly sworn to testify to the truth, the whole
9 truth and nothing but the truth; that thereupon the foregoing
10 questions were asked and the foregoing answers made by the
11 witness which were duly recorded by me by means of stenotype;
12 which is reduced to written form under my direction and
13 supervision, and that this is, to the best of my knowledge and
14 belief, a true and correct transcript.

15 I further certify that I am neither of counsel to
16 either party nor interested in the events of this case.

17 IN WITNESS WHEREOF, I have hereto set my hand
18 this 16th day of April 2018.

19 Audra Smith

20
21 

22
23 Audra Smith, RPR, FCRR

24 Notary Number: 201329000033

25